Ins. Co. v. Spratley (1899) 172 U. S. 602, 19 Sup. Ct. 308. Although the result in the principal case works a hardship on the policy holders, it is in accord with the authorities. The question of jurisdiction was before the court, and the Nebraska statute could not control because the appellant was found not to be doing business within that state.

JUDGMENTS—STARE DECISIS—RES JUDICATA—LAW OF THE CASE.—The plaintiff purchased an automobile from a retail dealer and was injured by the collapse of a defective wheel. He sued the manufacturer and secured a large judgment. On the first appeal, the appellate court reversed the decision of the trial court and held that since there was no contractual relationship between the parties, there was no "liability." On the second appeal, the identical case, cause of action, and parties again came before the same court. *Held,* that the plaintiff should recover. Ward, J., *dissenting. Johnson v. Cadillac Motor Car Co.* (1919, C. C. A. 2d) October Term 1919, No. 20.

The doctrine of *stare decisis* is that when a court has once laid down a principle as applicable to a certain state of facts it will adhere to that principle and apply it to all future cases where the facts are substantially the same. *Cf. Moore v. City of Albany* (1885) 98 N. Y. 396; *cf. Menge v. The Madrid* (1889, C. C. E. D. La.) 40 Fed. 677. However, it is well settled that courts are privileged to depart from this doctrine when it is necessary to do so in order to prevent the perpetuation of a palpable error. *Calhoun Gold Mining Co. v. Ajax Gold Mining Co.* (1899) 27 Colo. 1, 59 Pac. 607; *Pitcock v. State* (1909) 91 Ark. 527, 121 S. W. 742; see COMMENT (1918) 27 YALE LAW JOURNAL, 668. The doctrine of *res judicata* is that when a final judgment has been rendered on the merits of a cause of action, by a competent tribunal, it cannot be litigated again by the same parties. *Cf. Williamsburgh Savings Bank v. Town of Solon* (1893) 136 N. Y. 465, 32 N. E. 1058; *cf. Mitchell v. First Natl. Bk. of Chicago* (1901) 180 U. S. 471, 21 Sup. Ct. 418; *cf. Sly v. Hunt* (1893) 159 Mass. 151, 34 N. E. 187. *Res judicata* has reference to the facts of a case. See *Sawyer v. Woodbury* (1856) 73 Mass. 499, 502; see *Citizens' Bank v. Brigham* (1900) 61 Kan. 727, 731, 60 Pac. 754, 755. While *stare decisis* has reference to the legal principle involved. See *Oliver Co. v. Louisville Realty Co.* (1913) 156 Ky. 628, 640, 161 S. W. 570, 575; see *In re Preisers Will* (1913, Surr. Ct.) 79 Misc. 668, 671, 140 N. Y. Supp. 844, 846. The doctrine of *res judicata* could not be invoked in the instant case as no final judgment had ever been entered. But by the great weight of authority, all questions which were decided by a court of final resort on the first appeal become the law of the case and are not subject to review on the second appeal. *McKinney v. State* (1888) 117 Ind. 26, 19 N. E. 613; *City of Hastings v. Foxworthy* (1895) 45 Neb. 676, 63 N. W. 955. The instant case in holding that this rule is not inexorable, is in accord with some authority. *Missouri, K. & T. Ry. v. Merrill* (1902) 65 Kan. 436, 70 Pac. 358; see *Bird v. Sellers* (1894) 122 Mo. 23, 32, 26 S. W. 668, 670. It is submitted to be sound. For when a palpably erroneous doctrine has been established on the former appeal and the appellate court is convinced that the evils of adherence to it are manifestly greater than those of departure, it would seem that the sensible thing to do is to correct the error at the first opportunity. For a discussion of an automobile manufacturer's liability to third parties, see (1916) 25 YALE LAW JOURNAL, 679.

LANDLORD AND TENANT—COVENANT NOT TO SUBLET—ASSIGNMENT.—A leased his premises to B. The lease contained a covenant not to sublet, but no covenant forbidding an assignment. B assigned his lease to the defendant, who took possession. The plaintiff purchased the premises from A and, during the term prescribed by the lease, brought an action of unlawful detainer. *Held,* that the

action must fail because an assignment was not a breach of the covenant against subletting. *Goldman v. Daniel Feder & Co.* (1919, W. Va.) 100 S. E. 400.

A transfer by the lessee of an estate less than his own, leaving a reversion in himself, is a sublease. *Stewart v. Long Island Ry.* (1886) 102 N. Y. 601, 8 N. E. 200; *St. Joseph & St. L. Ry. v. St. Louis, I. M. & S. Ry.* (1896) 135 Mo. 173, 36 S. W. 602. But a transfer of the lessee's entire interest in the whole of the premises is an assignment. *Craig v. Summers* (1891) 47 Minn. 189, 49 N. W. 742; *Hogg v. Reynolds* (1901) 61 Neb. 758, 86 N. W. 479. In the absence of a statute, a sublessee can maintain no action against the original lessor for a breach of a covenant in the lease. *Ganson v. Tifft* (1877) 71 N. Y. 48. And he is not liable to the lessor on the covenants of the original lease. *McFarlan v. Watson* (1850) 3 N. Y. 286; *Dunlap v. Bullard* (1881) 131 Mass. 161. But the assignee of a lease gets the benefits of any covenants of the original lease, and can sue the lessor direct for any breach which occurs during the period of his ownership. *McClenahan v. Gwynn* (1811, Va.) 3 Munf. 556; *Cleveland C. C. & St. L. Ry. v. Wood* (1901) 189 Ill. 352, 59 N. E. 619. And he is liable to the lessor for breaches of the lessee's covenants which occurred after the assignment. *Howland v. Coffin* (1831) 29 Mass. 125; *Salisbury v. Shirley* (1884) 66 Calif. 223, 5 Pac. 104. In the absence of a statutory prohibition or of a provision in the lease to the contrary, a lessee is privileged to assign or to sublet. *Ray v. Johnson* (1893) 98 Mich. 34, 56 N. W. 1048; *Crowe v. Riley* (1900) 63 Oh. St. 1, 57 N. E. 956. But a provision of the lease expressly denying the power to assign or sublet is valid. *Indianapolis Manufacturing Carpenters' Union v. Cleveland C. C. & I. Ry.* (1873) 45 Ind. 281; *Shannon v. Grundstaff* (1895) 11 Wash. 536, 40 Pac. 123. However, restraints upon alienation are strictly construed against the lessor. *Hilsendegen v. Hartz Clothing Co.* (1911) 165 Mich. 255, 130 N. W. 646; *Burns v. Dufresne* (1912) 67 Wash. 158, 121 Pac. 46; see (1920) 29 YALE LAW JOURNAL, 360. Accordingly, a subletting is not a breach of a covenant not to assign. *Hargrave v. King* (1848) 40 N. C. 430; *Moore v. Guardian Trust Co.* (1903) 173 Mo. 218, 73 S. W. 143. The instant case, in holding the converse, is in accord with the great weight of authority. *Lynde v. Hough* (1857, N. Y. Sup. Ct.) 27 Barb. 415; *Burns v. Dufresne* (1912) 67 Wash. 158, 121 Pac. 46. And because of the substantial differences between an assignment and a sublease, such a construction is submitted to be sound.

MARRIAGE AND DIVORCE—ANNULMENT—ALIMONY PENDENTE LITE AND COUNSEL FEES—SUIT BY RELATIVES OF DECEASED HUSBAND.—The plaintiffs, relatives of a deceased husband, sought to annul his marriage with the defendant under section 1747 of the Code of Civil Procedure, which allows a relative who has an interest to avoid a marriage to sue for annulment on the ground of lunacy after the death of the lunatic and during the life of the other spouse. The statute is silent as to alimony and counsel fees. The defendant asked for alimony *pendente lite* and counsel fees. An allowance was made by the lower court out of a trust fund of which the deceased was the life-tenant, with remainder to his heirs-at-law and next of kin, the trustee, however, not being a party to this suit. *Held* (two judges *dissenting*), that alimony and counsel fees should be denied. *Farnham v. Farnham* (1919, N. Y.) 124 N. E. 894.

The question of the allowance of alimony *pendente lite* and counsel fees to the wife depends on whether the marriage was valid, and which party brings the action. It is agreed by the courts that if it is admitted that the marriage is void *ab initio,* temporary alimony and counsel fees will not be allowed. *Sinclair v. Sinclair* (1898, Ct. Err.) 57 N. J. Eq. 222, 40 Atl. 679; *Knott v. Knott* (1902, N. J. Ch.) 51 Atl. 15. Where the husband brings an action for annulment and the wife insists that the marriage is valid, alimony *pendente lite* and counsel